MC(N) 2414/2006
BEFORE
HON'BLE MR. JUSTICE AMITAVA ROY
HON'BLE MR. JUSTICE A.K.GOSWAMI

(Amitava Roy, J)

Heard Mr HK Baishya, learned counsel for the applicant and Mr R Baruah, learned counsel for the opposite party.

This is an application for condonation of delay of 274 days in filing the accompanying appeal passed by the learned Addl. District Judge, Jorhat in T.S. (M) No. 11/04 thereby allowing the petition under Section 13(1)(i a) and (i b) of the Hindu Marriage Act, 1966 (for short, hereinafter referred to as 'the Act') for dissolution of the marriage between the parties.

According to the applicant, at the first instance the factum of delivery of the impugned judgment and order was not conveyed to him by his learned counsel at Jorhat. It was on 30.9.2005 when he visited Jorhat and met his counsel that he could come to learn about the decision. He returned home thereafter to consult his family members and on 7.10.2005 met his counsel at Jorhat to ascertain the prospects of his appeal if filed. On being advised in the affirmative, he returned home. He could not take immediate steps thereafter as his old mother was then seriously ill suffering from malaria. Though his mother recovered in the month of October, 2005, he fell ill to sciatica and peptic ulcer syndrome for which he had to remain under medical treatment from 1.11.2005 to 8.6.2006. In between, however, out of his anxiety to file the appeal he sent one of his cousins, namely, Rupak Gogoi to Jorhat to meet his counsel to arrange for the certified copy of the judgment and order. It was, however, after his recovery on 9.6.2006 that he met his counsel at Jorhat, obtained the certified copy and returned home to arrange for the finances. He met his counsel at Jorhat on 16.6.2006 and handed over the brief for preferring an appeal which was eventually filed on 23.6.2006 along with the application for condonation of delay. No counter has been filed on behalf of the opposite party.

Whereas Mr Baishya has urged on the basis of the pleaded averments as above that sufficient cause has been shown to explain the delay, Mr Baruah has insisted that even if the averments so made are taken at their face value no such cause is forthcoming.

Even assuming that the applicant for the first time had come to learn of the judgment and order assailed in the accompanying appeal on 30.9.2005, his intermittent trips to Jorhat for the purposes as aforementioned, in our opinion, do not indicate his seriousness to prefer the appeal in time. More importantly, the averments in paragraph 8 regarding his illness and medical treatment have affirmed to be true to his information derived from the records as is evident from the affidavit appended to the application. Incidentally, the period from 1.11.2005 to 8.6.2006 is the bulk of the time that had intervened contributing to the delay. Having regard to the casual nature of affirmation made on this vital factual aspect having a bearing on the applicant's plea for condonation of delay, we are constrained to hold that no sufficient cause within the meaning of Section 5 of the Limitation Act has been offered to explain the delay.

In the above view of the matter, we do not find any merit in this application. It is, accordingly, rejected.